

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 722

FINAL READING

Introduced by Schimek, 27

Read first time January 17, 2001

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to military leave; to amend sections 48-230,
2 48-231, 55-160, 55-161, 55-164, and 55-165, Reissue
3 Revised Statutes of Nebraska, and section 79-990, Revised
4 Statutes Supplement, 2001; to change and eliminate
5 provisions relating to absence from employment for
6 military purposes; to change provisions relating to
7 penalties as prescribed; to harmonize provisions; to
8 repeal the original sections; and to outright repeal
9 sections 55-162 and 55-163, Reissue Revised Statutes of
10 Nebraska.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-230, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-230. Any person who violates ~~the provisions of~~
4 sections 48-225 to 48-231 ~~and 55-161~~ shall be guilty of a Class IV
5 misdemeanor. Such person shall be prohibited from receiving any
6 compensation from public funds until he or she complies with ~~the~~
7 ~~provisions of~~ sections 48-225 to 48-231. ~~and 55-161.~~

8 Sec. 2. Section 48-231, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 48-231. The county attorneys, in their respective
11 counties, shall prosecute, before any court of appropriate
12 jurisdiction, all persons charged with violating ~~the provisions of~~
13 sections 48-225 to 48-231. ~~and 55-161.~~

14 Sec. 3. Section 55-160, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 55-160. (1) All employees, including elected officials
17 of the State of Nebraska, or any political subdivision thereof, who
18 are ~~shall be~~ members of the National Guard, Army Reserve, Naval
19 Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard
20 Reserve, shall be entitled to a military leave of absence from
21 their respective duties, without loss of pay, ~~on all days during~~
22 ~~which they are~~ when employed with or without pay under the orders
23 or authorization of competent authority in the active service of
24 the state or of the United States. Members who normally work or
25 are normally scheduled to work one hundred twenty hours or more in
26 three consecutive weeks shall receive a military leave of absence
27 of one hundred twenty hours each calendar year. Members who
28 normally work or are normally scheduled to work less than one

1 hundred twenty hours in three consecutive weeks shall receive a
2 military leave of absence each calendar year equal to the number of
3 hours they normally work or would normally be scheduled to work,
4 whichever is greater, in three consecutive weeks. Such military
5 leave of absence may be taken in hourly increments and, for not to
6 exceed fifteen workdays in any one calendar year. Such leave of
7 absence shall be in addition to the regular annual leave of the
8 persons named herein in this section.

9 (2) When the Governor of this state ~~shall declare~~
10 declares that a state of emergency exists, and any of the persons
11 named in this section are ordered to active service of the state, a
12 state of emergency an additional leave of absence will be granted
13 until such member is released from active service of the state by
14 competent authority. A military leave of absence shall not be used
15 during a state of emergency declared by the Governor. Other forms
16 of leave may be granted. During a state of emergency During the
17 additional leave of absence because of the call of the Governor,
18 any official or employee subject to ~~the provisions of~~ this section
19 shall receive ~~such portion of his or her normal~~ salary or
20 compensation ~~as will equal the loss he may suffer while minus the~~
21 state active duty base pay he or she receives in active service of
22 the state. Governmental officers serving a term of office shall
23 receive their compensation as provided by law.

24 Sec. 4. Section 55-161, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 55-161. ~~All~~ (1) The parts of the federal Uniformed
27 Services Employment and Reemployment Rights Act of 1994, 38 U.S.C.
28 Chapter 43, listed in subdivisions (a) through (j) of this

1 subsection or any other parts referred to by such parts, in
2 existence and effective as of January 1, 2001, are adopted as
3 Nebraska law. This section shall be applicable to all persons
4 employed in the State of Nebraska and shall include all officers
5 and permanent employees, including teachers employed on a one-year
6 contract basis and elected officials, of the state, or of any of
7 its agencies or political subdivisions. The Legislature hereby
8 adopts:

9 (a) Section 4301(a) -- Purposes;

10 (b) Section 4302 -- Relation to other law and plans or
11 agreements;

12 (c) Section 4303(2), (4), (7) through (13), (15), and (16)
13 and those portions of subparagraph (3) not relating to employment
14 in a foreign country -- Definitions;

15 (d) Section 4304 -- Character of service;

16 (e) Section 4311 -- Discrimination against persons who
17 serve in the uniformed services and acts of reprisal prohibited;

18 (f) Section 4312 -- Reemployment rights of persons who
19 serve in the uniformed services;

20 (g) Section 4313 with the exception of that portion of
21 subparagraph (a) dealing with reemployment of federal employees --
22 Reemployment positions;

23 (h) Section 4316 -- Rights, benefits, and obligations of
24 persons absent from employment for service in a uniformed service;

25 (i) Section 4317 -- Health plans; and

26 (j) Section 4318 -- Employee pension benefit plans.

27 (2) This section applies to all members performing duty
28 in active service of the state.

1 (3) , who leave a position other than temporary to
2 undergo military training with the armed forces of the United
3 States or undertake military duty in the active service of the
4 state, shall be entitled to a leave of absence from such civil
5 employment for the period of such training or service, not to
6 exceed four years, plus in each case any additional period in which
7 he was unable to obtain orders relieving him from active duty, plus
8 any period of time hospitalized incident to active duty, without
9 loss of status or efficiency rating, and without loss of pay during
10 the first fifteen workdays of such leave of absence. Such pay for
11 the first fifteen workdays shall not be construed as being in
12 addition to the pay provided for in section 55-160. The proper
13 appointing authority or employer may make a temporary appointment
14 to fill any vacancy created by the absence of an officer or
15 employee pursuant to this section. such leave of absence. When
16 such person is separated from such training or service under
17 honorable conditions, or upon his discharge from hospitalization
18 incident to that duty, such employee shall be entitled to return to
19 his former position with such seniority, status, pay, and vacation
20 as he would have had if he had not been absent for such purpose, if
21 he is still qualified to perform the duties of his former position,
22 and if he makes application within thirty days after he is released
23 from such training or service. If such person is not qualified to
24 perform the duties of such position upon his return by reason of
25 disability sustained during the training or service but is
26 qualified to perform the duties of any other position in the employ
27 of the employer, he shall be restored to such other position, the
28 duties of which he is qualified to perform, as will provide him

1 with the same seniority, status, and pay, or the nearest
2 proximation thereof consistent with the circumstances in his case.
3 Such ~~person~~ officer or employee shall not be discharged from his or
4 her former or new position without justifiable cause within one
5 year after reinstatement. ~~It shall be the duty of the~~

6 (4) The Commissioner of Labor ~~to~~ shall enforce ~~the~~
7 ~~provisions of~~ this section.

8 (5) The Adjutant General shall perform duties assigned to
9 the Secretary of Defense, Secretary of Veterans Affairs, or
10 Secretary of Labor in the portions of 38 U.S.C. Chapter 43 adopted
11 under this section.

12 Sec. 5. Section 55-164, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 55-164. If any employer fails to comply with any of the
15 provisions of ~~sections 55-160 to 55-163~~ section 55-160 or 55-161,
16 the employee may, at his or her election, bring an action at law
17 for damages for such noncompliance. ~~He~~ The employee may also apply
18 to the courts for such equitable relief as may be just and proper
19 under the circumstances.

20 Sec. 6. Section 55-165, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 55-165. Any person, firm, or organization violating ~~the~~
23 ~~provisions of sections 55-160 to 55-164~~ section 55-160 or 55-161
24 shall be guilty of a Class IV misdemeanor, and, in addition
25 thereto, shall restore to the employee all rights of which he or
26 she has been illegally deprived.

27 Sec. 7. Section 79-990, Revised Statutes Supplement,
28 2001, is amended to read:

1 79-990. (1) Any member who is eligible for reemployment
2 on or after December 12, 1994, pursuant to 38 U.S.C. chapter 43, as
3 ~~such chapter existed on May 27, 2001~~ adopted under section 55-161,
4 or who is eligible for reemployment under ~~sections 55-160 to 55-163~~
5 section 55-160 may pay to the retirement system after the date of
6 his or her return from active military service, and within the
7 period required by law, not to exceed five years, an amount equal
8 to the sum of all deductions which would have been made from the
9 salary which he or she would have received during the period of
10 military service for which creditable service is desired. If such
11 payment is made, the member shall be entitled to credit for
12 membership service in determining his or her annuity for the period
13 for which contributions have been made and the board shall be
14 responsible for any funding necessary to provide for the benefit
15 which is attributable to this increase in the member's creditable
16 service. The member's payments shall be paid as the trustees may
17 direct, through direct payments to the retirement system or on an
18 installment basis pursuant to a binding irrevocable payroll
19 deduction authorization between the member and the school district.
20 Creditable service may be purchased only in one-half-year
21 increments, starting with the most recent year's salary.

22 (2) Under such rules and regulations as the board may
23 prescribe, any member who was away from his or her position while
24 on a leave of absence from such position authorized by the board of
25 education of the school district by which he or she was employed at
26 the time of such leave of absence or pursuant to any contractual
27 agreement entered into by such school district may receive credit
28 for any or all time he or she was on leave of absence. Such time

1 shall be included in creditable service when determining
2 eligibility for death, disability, termination, and retirement
3 benefits. The member who receives the credit shall earn benefits
4 during the leave based on salary at the level received immediately
5 prior to the leave of absence. Such credit shall be received if
6 such member pays into the retirement system (a) an amount equal to
7 the sum of the deductions from his or her salary for the portion of
8 the leave for which creditable service is desired, (b) any
9 contribution which the school district would have been required to
10 make for the portion of the leave for which creditable service is
11 desired had he or she continued to receive salary at the level
12 received immediately prior to the leave of absence, and (c) regular
13 interest on these combined payments from the date such deductions
14 would have been made to the date of repayment. Such amounts shall
15 be paid as the trustees may direct, through direct payments to the
16 retirement system or on an installment basis pursuant to a binding
17 irrevocable payroll deduction authorization between the member and
18 the school district over a period not to exceed five years from the
19 date of the termination of his or her leave of absence. Interest
20 on any delayed payment shall be at the rate of regular interest.
21 Creditable service may be purchased only in one-half-year
22 increments, starting with the most recent years' salary, and if
23 payments are made on an installment basis, creditable service will
24 be credited only as payment has been made to the retirement system
25 to purchase each additional one-half-year increment. Leave of
26 absence shall be construed to include, but not be limited to,
27 sabbaticals, maternity leave, exchange teaching programs, full-time
28 leave as an elected official of a professional association or

1 collective-bargaining unit, or leave of absence to pursue further
2 education or study. A leave of absence granted pursuant to this
3 section shall not exceed four years in length, and in order to
4 receive credit for the leave of absence, the member must have
5 returned to employment with the school district within one year
6 after termination of the leave of absence.

7 (3) Until one year after May 2, 2001, any member
8 currently employed by the school district who resigned from
9 full-time employment with the school district for maternity
10 purposes prior to September 1, 1979, and was reemployed as a
11 full-time employee by the school district before the end of the
12 school year following the school year of such member's resignation
13 may have such absence treated as though the absence was a leave of
14 absence described in subsection (2) of this section. The period of
15 such absence for maternity purposes shall be included in creditable
16 service when determining the member's eligibility for death,
17 disability, termination, and retirement benefits if the member
18 submits satisfactory proof to the board that the prior resignation
19 was for maternity purposes and the member complies with the payment
20 provisions of subsection (2) of this section before the one-year
21 anniversary of May 2, 2001.

22 Sec. 8. Original sections 48-230, 48-231, 55-160,
23 55-161, 55-164, and 55-165, Reissue Revised Statutes of Nebraska,
24 and section 79-990, Revised Statutes Supplement, 2001, are
25 repealed.

26 Sec. 9. The following sections are outright repealed:
27 Sections 55-162 and 55-163, Reissue Revised Statutes of Nebraska.